

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-220005.2 **DATE:** January 14, 1986
MATTER OF: Tri-County Corrugated, Inc.

DIGEST:

Subsequent protest to GAO which was not filed within 10 working days of actual knowledge of initial adverse agency action is dismissed as untimely. Earlier receipt by GAO of information copy of letter which was addressed to the contracting officer and did not include a clear indication of a desire for a decision by GAO did not constitute a protest to GAO.

Tri-County Corrugated, Inc. (Tri-County), protests any award to American Refuse Services, Inc. (American), or World Refuse Service, Inc. (World), under invitation for bids No. N62467-85-B-5903, issued by the Department of the Navy for solid waste collection and disposal services at the Naval Training Center Complex in Orlando, Florida. We dismiss the protest as untimely.

By letter addressed to the contracting officer and dated August 21, 1985, Tri-County protested that American and World had failed to arrive at their bid prices independently, thus violating the solicitation's certificate of independent price determination. In particular, Tri-County alleged that the president of American was the vice-president of World and pointed out that the bids submitted by the two firms were precisely \$40,000 apart.

In letters addressed to our Office and dated August 22 and August 23, Tri-County enclosed the August 21 letter to the contracting officer and indicated that "we hereby officially file with your office this protest."

Subsequently, on August 30, we dismissed the protest to our Office, holding that:

"[I]f Tri-County means to suggest that the two firms acted jointly in preparing their proposals, then we note that collusive bidding is a matter for the determination of the contracting

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officer who, if he perceives evidence of collusion, is expected to report the situation to the Attorney General. Federal Acquisition Regulation, §§ 3.103 and 3.303, 48 C.F.R. §§ 3.103 and 3.303 (1984). Further, whether a bidder in line for award may have engaged in collusive bidding is to be considered in the contracting officer's determination of responsibility. Our Office will not consider a challenge to an affirmative determination of responsibility where, as here, there has been no showing of possible fraud or bad faith. See DelRocco & Sons, Inc., B-218314, Mar. 22, 1985, 85-1 C.P.D. ¶ 339."

Tri-County Corrugated, Inc., B-220005, Aug. 30, 1985, 85-2 C.P.D. ¶ 257.

On November 15, we received from Tri-County an information copy of a letter dated November 8 and addressed to the contracting officer. This letter informed the contracting officer that Tri-County had received a notice that the contracting officer had denied the protest to the agency and advised the contracting officer that Tri-County "intends to administratively appeal the denial of its bid protest." Since we did not consider this letter to constitute a protest to our Office, we took no action.

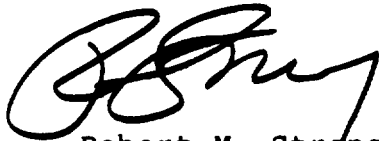
On November 27, we received a letter from Tri-County, addressed to our Office, which indicated that "a memorandum in support of the bid protest filed November 8, 1985, with your office" was enclosed. This letter included a copy of Tri-County's November 8 letter to the contracting officer and a memorandum concerning the "APPEAL FROM THE DECISION OF THE CONTRACTING OFFICER" which was "BEFORE THE COMPTROLLER GENERAL OF THE UNITED STATES."

Tri-County apparently believes that it filed a protest with our Office concerning the contracting officer's denial of its agency-level protest when it sent us a copy of the November 8 letter addressed to the contracting officer. We disagree. Since the November 8 letter was not addressed to our Office and did not include a clear indication that Tri-County desired a decision by our Office, that letter did not constitute a protest to this Office. 4 C.F.R. § 21.1(c) (1985); see also Canberra Industries, Inc., B-213812, Mar. 15, 1984, 84-1 C.P.D. ¶ 310; cf. Container Products Corporation, B-218556, June 26, 1985, 64 Comp. Gen. _____, 85-1 C.P.D. ¶ 727. In addition, we note that Tri-County knew at least as early as November 8 of the Navy's denial of

its agency-level protest. It was not until November 27 that we received from Tri-County correspondence indicating its belief that the matter was before us for decision. Even if we construe this correspondence as a "protest," since it was not filed with our Office within 10 working days after receipt of actual knowledge of the initial adverse agency action, it is untimely. 4 C.F.R. § 21.2(a)(3).

In any event, as indicated previously, on August 30, 1985, we dismissed the identical protest to our Office and no timely appeal was perfected pursuant to section 21.12 of our Bid Protest Regulations, 4 C.F.R. § 21.12.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is positioned above the printed name.

Robert M. Strong
Deputy Associate
General Counsel